



**US Army Corps
of Engineers®**

ENGINEERING AND CONSTRUCTION BULLETIN

No. 2003-25 Issuing Office: CECW-ETE Issued: 29 Dec 2003 Expires: 29 Dec 2005

Subject: Architect-Engineer Responsibility Management Program (AERMP)

Applicability: Information

1. We have received and analyzed the FY03 AERMP reports from all MSCs and Centers, which are required by Chapter 7 of EP 715-1-7, Architect-Engineer Contracting. The following observations are made:

a. The total amount of A-E liability settlements received in FY03 was \$377,000. This is a notable decrease from the previous ten-year average of \$1,394,000. The reduction from previous historical levels is attributed to two factors. First, the increased use of design-build shifts the liability for design errors to constructor contractors who must correct their work without additional compensation. Second, districts report better A-E design quality due to independent technical reviews, oversight by USACE regional technical specialists, A-E quality control plans, use of DrChecks, and other quality control and assurance processes.

b. Ten liability cases were settled in FY03. The negotiated settlements were about 88% of the original computed damages, which is far above the historical average of about 43%.

c. Investigation and recovery (I&R) costs were only reported for six of the settled cases. For those cases, about 13 cents in I&R costs were spent for each dollar of A-E settlement. Since FY97 when we started collecting I&R cost data, about 10 cents in I&R costs were spent for each dollar of A-E settlement. Reasonable I&R costs are part of the assessable damages and must be tracked and reported for all A-E liability cases.

d. The backlog of liability cases (and associated dollars) carried over into FY04 is about the same as carried over into FY03. Most of the backlog is due to five very large cases. We have an important responsibility to our customers to pursue A-E liability cases in a timely manner.

2. Based on the FY03 reports, MSCs and districts seem to be very aware of the requirements of the AERMP and have effective programs in place. The FY04 MSC AERMP reports are due to CECW-ETE by 30 November 2004. Districts are required to report quarterly to their MSC on the progress of each case. The following points should be considered when reporting:

a. All design deficiencies are not A-E liability cases. It is only a case if the A-E firm is liable for the damages and we decide to pursue recovery. See EP 715-1-7, para. 7-7.h and the flowchart at Appendix BB.

ECB 2003-25

Subject: Architect-Engineer Responsibility Management Program (AERMP)

b. The reports must include I&R costs, which are part of the total assessable damages. It is also important to track I&R costs as a measure of the effectiveness of the AERMP in each command.

c. The value of any work-in-kind (i.e. A-E services) performed by an A-E firm as "payment" for a liability claim must also be reported. (Of course, this does not include the effort for an A-E to correct its own mistakes.) Also, an A-E firm cannot perform the construction required to correct a design deficiency. See EP 715-1-7, para. 7-7.c.

d. If an A-E settlement is made without the need for a letter of intent, a case report is still required and the settlement amount included in the annual report. See footnote 6 on page 7-8 of EP 715-1-7.

3. HQUSACE point of contact for the AERMP is Don Evick, CECW-ETE, 202-761-4227.

A handwritten signature in black ink, appearing to read 'D. Basham', with a stylized, flowing script.

DONALD L. BASHAM, P.E.
Chief, Engineering and Construction Division
Directorate of Civil Works